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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 307-1 (LJL)

5 MICHAEL SHVARTSMAN,

6 Defendant.

7 -----x Plea

8 New York, N.Y.

9 April 3, 2024

11:20 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the

16 Southern District of New York

DANIEL NESSIM

17 MATTHEW SHAHABIAN

Assistant United States Attorneys

18 ALAN FUTERFAS

19 ELLEN RESNICK

Attorneys for Defendant

20 ALSO PRESENT: Special Agent Marc Troiano, FBI

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1 THE DEPUTY CLERK: In the matter of 23 Cr. 307-1,
2 U.S.A. v. Michael Shvartsman.

3 Starting with counsel for the government, please state
4 your appearance for the record.

5 MR. NESSIM: Good morning your Honor. Daniel Nessim
6 and Matthew Shahabian for the government. Joining us at
7 counsel table is FBI Special Agent Marc Troiano.

8 THE COURT: Good morning.

9 MR. FUTERFAS: Good morning. Alan Futerfas for
10 Mr. Shvartsman, and joined by Ellen Resnick from my office.

11 THE COURT: Good morning, Mr. Futerfas.

12 MR. FUTERFAS: I appreciate your patience. I had a
13 matter across the street. Thank you.

14 THE COURT: So I gather, Mr. Futerfas, that you have
15 an application.

16 MR. FUTERFAS: Yes, your Honor. We are going to -- we
17 move to withdraw the previously entered plea of not guilty, and
18 in place therefor enter a plea to Count Three of the indictment
19 pursuant to a plea agreement and related preliminary order of
20 forfeiture.

21 THE COURT: Very well. Before we proceed further,
22 there's one matter with respect -- a couple of matters with
23 respect to the plea agreement that I wanted to go through.

24 The first is that I note that there is a markup in
25 handwriting on the first paragraph on the second page of the

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1 plea agreement. Mr. Futerfas, I'll confirm that later on with
2 your client, but I gather those are changes that you've agreed
3 to with the government and has been marked up this morning. Is
4 that correct?

5 MR. FUTERFAS: That's correct. There are some typos
6 that I think your chambers found that neither the government
7 nor the defense identified, but that's my initials and my
8 client's initials accepting those changes.

9 THE COURT: And the same thing from the government?

10 MR. NESSIM: Yes, your Honor.

11 THE COURT: And then Mr. Futerfas, on the third page
12 of the plea agreement, the second paragraph under sentencing
13 range, there's reference to what would happen in the event that
14 there was a global plea in this case. I want to confirm that
15 your understanding is the same as mine.

16 My understanding is that there will not be a global
17 resolution by the deadline of yesterday, and that as a result
18 of that, the government is relieved of the obligation that it
19 otherwise would have to agree to a one-level downward variance.
20 Is that correct?

21 MR. FUTERFAS: It is, your Honor. Thank you.

22 THE COURT: All right. I'll confirm that also with
23 your client.

24 Mr. Shvartsman, I've been informed that you wish to
25 plead guilty to Count Three of the superseding indictment. Is

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1 that correct?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Sir, before I accept your guilty plea, I
4 am going to ask you certain questions so that I can establish
5 to my satisfaction that you understand what you are giving up
6 by waiving indictment, and that you wish to plead guilty
7 because you are guilty and not for some other reason.

8 If you do not understand any of my questions or if you
9 want to consult with your lawyer at any time, for any reason,
10 just let me know and I will give you as much time as you need
11 to do that, because it is essential in order to have a valid
12 plea that you understand each question before you answer.

13 Will you do that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Fishman, will you please swear
16 Mr. Shvartsman.

17 THE DEPUTY CLERK: Please rise and raise your right
18 hand.

19 (Defendant sworn)

20 THE DEPUTY CLERK: Thank you.

21 THE COURT: Sir, you're now under oath, which means
22 that if you answer any of my questions falsely, you may be
23 prosecuted for the separate crime of perjury. Do you
24 understand that?

25 THE DEFENDANT: I do.

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1 THE COURT: What is your full name?

2 THE DEFENDANT: Michael Shvartsman.

3 THE COURT: Can you try to put the microphone a little
4 bit closer to you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How old are you, sir?

7 THE DEFENDANT: 53.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: I finished grade 12.

10 THE COURT: Where was that?

11 THE DEFENDANT: In Toronto, Canada.

12 THE COURT: Have you ever been treated or hospitalized
13 for any mental illness?

14 THE DEFENDANT: No, I've not.

15 THE COURT: Are you now or have you recently been
16 under the care of a doctor or a psychiatrist?

17 THE DEFENDANT: No, I'm not.

18 THE COURT: Have you been treated or hospitalized for
19 any type of addiction, including drug or alcohol addiction?

20 THE DEFENDANT: No, I've not.

21 THE COURT: Have you taken any drugs, medicine or
22 pills or drunk any alcoholic beverages in the past two days?

23 THE DEFENDANT: No, I've not.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes, it is.

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1 THE COURT: Do you understand what is happening today?

2 THE DEFENDANT: I do.

3 THE COURT: Mr. Futerfas, do you have any doubt as to
4 your client's competence to plead at this time?

5 MR. FUTERFAS: I do not.

6 THE COURT: Does the government have any doubt as to
7 the defendant's competence to plead at this time?

8 MR. NESSIM: No, your Honor.

9 THE COURT: On the basis of Mr. Shvartsman's responses
10 to my questions, my observations of his demeanor here in court
11 today and previously, and the representations of counsel, I
12 find that Mr. Shvartsman, the defendant, is fully competent to
13 enter an informed plea of guilty at this time.

14 Now, have you received a copy of the indictment
15 containing the charges against you?

16 THE DEFENDANT: I have, your Honor.

17 THE COURT: Did you read it?

18 THE DEFENDANT: I did, your Honor.

19 THE COURT: Have you had enough of a chance to discuss
20 with your lawyers the charge to which you intend to plead
21 guilty and any possible defenses to that charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have your lawyers explained to you the
24 consequences of entering a plea of guilty?

25 THE DEFENDANT: They have.

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1 THE COURT: Are you satisfied with the representation
2 you've received from your lawyers?

3 THE DEFENDANT: I am.

4 THE COURT: I'm now going to explain certain
5 constitutional rights that you have. These are rights that you
6 will be giving up if you enter a guilty plea. Please listen
7 carefully to what I'm about to say. If you do not understand
8 something, stop me, and your lawyer or I will explain the
9 matter more fully.

10 Now, under the Constitution and laws of the United
11 States, you have a right to plead not guilty to the charges
12 contained in the indictment.

13 Do you understand that?

14 THE DEFENDANT: I do.

15 THE COURT: If you did plead not guilty, you would be
16 entitled to a speedy and public trial by a jury on the charges
17 contained in the indictment.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: At a trial you would be presumed to be
21 innocent, and the government would be required to prove you
22 guilty by competent evidence beyond a reasonable doubt before
23 you could be found guilty.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: A jury of 12 people would have to agree
2 unanimously that you were guilty, and you would not have to
3 prove that you were innocent if you were to go to trial.

4 Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: At that trial and at every stage of your
7 case, you would be entitled to be represented by a lawyer, and
8 if you could not afford a lawyer, one would be appointed at
9 public expense, free of cost to any charge to you, to represent
10 you.

11 Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: During a trial, the witnesses for the
14 government would have to come to court and testify in your
15 presence. Your lawyer could cross-examine the witnesses for
16 government, object to evidence offered by the government, and
17 offer evidence on your own behalf if you so desired. And you
18 would have the right to have subpoenas issued or other process
19 used to compel witnesses to testify in your defense.

20 Do you understand that?

21 THE DEFENDANT: I do.

22 THE COURT: At a trial, although you would have the
23 right to testify if you chose to do so, you would also have the
24 right not to testify, and if you decided not to testify, no
25 one, including the jury, could draw any inference or suggestion

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1 of guilt from the fact that you did not testify.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: If you were convicted at a trial, you
5 would have the right to appeal that verdict. Do you understand
6 that?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand also that if you were
9 convicted at a trial, you would be able to appeal the pretrial
10 rulings I've made, including any rulings on motions to suppress
11 evidence or to dismiss the indictment?

12 THE DEFENDANT: Yes.

13 THE COURT: Even now as you are entering this plea,
14 you have the right to change your mind and plead not guilty and
15 go to trial on the charges contained in the indictment.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you plead guilty, and if I accept your
19 plea, you will give up your right to a trial and the rights
20 that I've just discussed, other than the right to a lawyer,
21 which you have regardless of whether or not you plead guilty.
22 But there will be no trial, and I will enter a judgment of
23 guilty and sentence you on the basis of your plea after I've
24 considered a presentence report, and whatever submissions I get
25 from your lawyers and the lawyer for the government.

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1 There will be no trial and no appeal with respect to
2 any of my pretrial rulings or with respect to whether you did
3 or did not commit the crime charged in Count Three.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you plead guilty, you will also have to
7 give up your right not to incriminate yourself, because I will
8 ask you questions about what you did in order to satisfy myself
9 that you are guilty as charged in Count Three of the
10 superseding indictment, and you will have to admit and
11 acknowledge your guilt to that count.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand each and every one of
15 these rights?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Mr. Shvartsman, are you willing to give up
18 your right to a trial and the other rights I've just discussed
19 with you?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, do you understand that you are
22 charged in Count Three with securities fraud in violation of
23 Title 15, United States Code, Sections 78j(b) and 78ff, and
24 Title 17, Code of Federal Regulations Section 240.10b-5, and
25 Title 18, United States Code, Section 2, sometimes colloquially

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1 referred to as Section 10(b) of the Securities Exchange Act and
2 Rule 10b-5 thereunder.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Would the government please state the
6 elements of the offense in question.

7 MR. NESSIM: Yes, your Honor. Count Three charges the
8 defendant with securities fraud and specifically insider
9 trading. There are two theories of insider trading that are
10 charged against the defendant. The elements are as follows,
11 all of which would need to be proven beyond a reasonable doubt
12 at trial.

13 Under the misappropriation theory, the elements are
14 that the defendant misappropriated confidential information for
15 the purpose of trading in securities, and he did so in breach
16 of a duty owed to the source of that information, and he acted
17 willfully and knowingly in doing so.

18 Under tippee liability, which is an alternative theory
19 of liability under the count, the elements are that the tipper
20 in question breached a duty by tipping confidential
21 information, the tippee knew or had reason to know that the
22 tippee improperly obtained the information, that the
23 information was obtained through the tipper's breach, and the
24 tippee, while in possession of that material non-public
25 information, used the information by trading or by tipping for

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1 his own benefit, and that the defendant as the tippee acted
2 willfully and knowingly in doing.

3 In addition, the government would need to prove that
4 venue is proper in the Southern District of New York by a
5 preponderance of the evidence.

6 THE COURT: Mr. Futerfas, am I correct that your
7 client's plea would intend to cover both theories?

8 MR. FUTERFAS: I think based on the allocution it's
9 probably going to cover the misappropriate theory.

10 THE COURT: I assume that's acceptable to the
11 government?

12 MR. NESSIM: Yes, your Honor.

13 THE COURT: Mr. Shvartsman, were you able to follow
14 what the government lawyer said?

15 THE DEFENDANT: I was, your Honor.

16 THE COURT: Do you understand that if you were to go
17 to trial, the government would have to prove all of those
18 elements beyond a reasonable doubt and would have to prove
19 venue in this district by a preponderance of the evidence?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: I am going to tell you the maximum
22 possible penalty for the crime charged in Count Three. The
23 maximum means the most that could the possibly be imposed. It
24 doesn't mean that is what you necessarily will receive. But
25 you have to understand that by pleading guilty, you are

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1 exposing yourself to the possibility of receiving any
2 combination of punishments up to the maximum I'm about to
3 describe. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: First I am going to tell you about the
6 possible restrictions on your liberty. The maximum term of
7 imprisonment for the crime charged in Count Three is 20 years,
8 which could be followed by supervised release of 3 years.

9 Supervised release means that you'll be subject to
10 supervision by the probation department. There will be rules
11 of supervised release that you'll have to follow, and if you
12 violate those rules, you can be returned to prison without a
13 jury trial to serve additional time with no credit for time you
14 served in prison as a result of your sentence, and no credit
15 for any time spent on post-release supervision.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: You should also understand, sir, that
19 there is no parole in the federal system, and that if you are
20 sentenced to prison, you will not be released early on parole.
21 There is a limited opportunity to earn credit for good
22 behavior, but you'll have to serve at least 85 percent of the
23 time you're sentenced to.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Second, in addition to these restrictions
2 on your liberty, the maximum possible punishment also includes
3 certain financial penalties. The maximum allowable fine is \$5
4 million or twice the gross pecuniary gain derived from the
5 offense or twice the gross pecuniary loss to persons other than
6 yourself, whichever is greater. In addition, I can order
7 restitution to any person or entity injured as a result of your
8 criminal conduct. I can also order you to forfeit all property
9 traceable to the commission of the offense or derived from the
10 offense or used to facilitate the offense. And finally, I must
11 order a mandatory special assessment of \$100.

12 Do you understand all of that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that these are the
15 possible maximum financial penalties?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: In your plea agreement with the
18 government, it is indicated that you admit to the forfeiture
19 allegation and agree to forfeit to the United States a sum of
20 money equal to \$18.2 million in United States currency, and all
21 right, title and interest in the following specific property:
22 Any and all funds in account number 10511067 in the name of EFT
23 Business Services, LLC at SNB Bank; the vessel Provocateur,
24 formerly known as Ipanema, bearing IMO number 9802798; and
25 three Yamaha jet skis tendered to the Provocateur.

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1 Do you agree to forfeit that property and any property
2 that constitutes or is derived from the proceeds traceable to
3 the offense?

4 MR. FUTERFAS: Your Honor, may I just note that there
5 is -- I know your Honor has a copy of it -- a consent
6 preliminary order of forfeiture. That forfeiture order makes
7 clear that the maximum amount that -- the total amount the
8 government is seeking here is 8.2 million. We recognize what
9 the plea agreement says, but we have a -- the consent order of
10 forfeiture is limiting the total amount to 18.2 million.

11 THE COURT: Let me first confirm that with the
12 government. Is that correct?

13 MR. NESSIM: That's correct, your Honor. While the
14 defendant is agreeing to forfeit his right to claim that
15 specific property, the maximum amount of forfeiture in
16 question, all things considered, is not to exceed the money
17 judgment amount of \$18.2 million.

18 THE COURT: Let me though first just confirm that the
19 defendant agrees to give up his rights to those properties and
20 to give up an amount up to \$18.2 million. Is that correct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you a United States citizen?

23 THE DEFENDANT: I'm not, your Honor.

24 THE COURT: Do you understand that as a result of your
25 guilty plea, there may be adverse effects on your immigration

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1 status, including further detention following completion of
2 your sentence, and removal or deportation from the United
3 States?

4 Do you understand that?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: In fact, as your plea agreement states, as
7 a result of your guilty plea and conviction, it is very likely
8 that your deportation or removal from the United States is
9 presumptively mandatory, and that at a minimum, you are at risk
10 of being deported or suffering some other adverse immigration
11 consequences.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you discuss the possible immigration
15 consequences of your plea with your lawyers?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that as a result of your
18 guilty plea, you may lose certain valuable civil rights, to the
19 extent that you have them or could otherwise obtain them now,
20 such as the right to vote, the right to hold public office, the
21 right to serve on a jury, and the right to possess any kind of
22 a firearm?

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Are you serving any other sentence, state

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1 or federal, or being prosecuted in state court for any crime?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that if your lawyer or
4 anyone else has attempted to predict what your sentence will
5 be, that their prediction could be wrong? No one, not your
6 lawyer, not the government's lawyer, no one can give you any
7 assurance of what your sentence will be, since I am going to
8 decide your sentence, and I'm not going to do that now. I'm
9 going to wait until I receive a presentence report prepared by
10 the probation department, do my own independent calculation of
11 the sentencing guidelines range, consider it and any possible
12 departures from it, and also determine what a reasonable
13 sentence is for you based on the sentencing factors set forth
14 by Congress and contained in the statute found in 18 U.S.C.
15 Section 3553(a).

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Have you discussed all of these issues
19 with your lawyers?

20 THE DEFENDANT: I have, your Honor.

21 THE COURT: Even if your sentence is different from
22 what your lawyer or anyone else has told you it might be, even
23 if it is different from what you expect or from what's
24 contained in the written plea agreement you've entered into
25 with the government, you will still be bound by your guilty

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1 plea and will not be allowed to withdraw your plea of guilty.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: I understand that you have entered into a
5 written plea agreement with the government. Is that correct?

6 THE DEFENDANT: That is correct.

7 THE COURT: I have that agreement in front of me. I
8 am going to mark it as Court Exhibit 1. I'm going to give it
9 today's date. And in a moment I'm going to have my courtroom
10 deputy present it to you. I am going to ask you to take a look
11 at the last page of the agreement and confirm to me that that
12 is your signature on the last page and tell me if you signed it
13 in the presence of your lawyer.

14 At the conclusion of today's proceedings, after
15 Mr. Fishman brings the agreement back to me, he will give it to
16 the government for the government to the retain.

17 Mr. Fishman.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Mr. Fishman, can you return it to me.

20 Did you read the plea agreement before you signed it?

21 THE DEFENDANT: I did, your Honor.

22 THE COURT: Did you discuss it with your lawyers
23 before you signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you fully understand it before you

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1 signed it?

2 THE DEFENDANT: I did.

3 THE COURT: I want to go over some of the provisions
4 of the plea agreement to establish to my satisfaction that you
5 understand it.

6 One of the features of your agreement with the
7 government is that you've agreed on the guidelines range that
8 applies in this case, something called the stipulated
9 guidelines range. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And in your case, the stipulated
12 guidelines range that you've agreed to with the government is
13 46 to 57 months of imprisonment and a fine range of \$20,000 to
14 \$5 million.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: That agreement is binding on you. Do you
18 understand that?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: It's binding on the government, but it's
21 not binding on me. I have my own obligation to determine the
22 correct guidelines range and what the appropriate sentence is
23 in your case. I'm not saying I will come up with any range
24 different from the one that you've agreed to with the
25 government, but if I do, I will not let you withdraw your plea,

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1 even if the range I determine is higher than the one you've
2 agreed to with the government.

3 Do you understand that?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: There is a provision in this plea
6 agreement that you've got with the government in which the
7 government would have agreed to a downward variance equivalent
8 to a one-level decrease in the offense level if there was a
9 global resolution, meaning a guilty plea, by yourself, Gerald
10 Shvartsman, and Bruce Garelick by April 2, 2024. Do you
11 understand that?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: Do you understand that because there is no
14 global resolution and global plea by April 2, that the
15 government is relieved of its obligation to agree to that
16 downward variance in that paragraph?

17 Do you understand that?

18 THE DEFENDANT: I do, your Honor.

19 MR. FUTERFAS: May we have a moment, your Honor.

20 (Defendant conferring with his counsel)

21 MR. FUTERFAS: Thank you, your Honor.

22 THE COURT: Okay. Now, Mr. Shvartsman, in your plea
23 agreement, you've waived your right to appeal or otherwise
24 challenge any sentence that is 57 months or below. In other
25 words, if I sentenced you to 57 months or anything less than 57

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1 months, you would have no right to appeal or otherwise try to
2 challenge that sentence.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: In your plea agreement, you've also waived
6 your right to appeal or otherwise challenge any term of
7 supervised release that is 3 years or less. Do you understand
8 that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And in your plea agreement, you've also
11 agreed to waive your right to appeal or otherwise challenge any
12 fine that is less than or equal to \$5 million or forfeiture
13 amount that is less than or equal to \$18.2 million, or the
14 special assessment of \$100.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: In your plea agreement, you've also waived
18 any and all right that you have to withdraw your plea or to
19 attack your conviction or sentence, either on direct appeal or
20 collaterally, on the ground that the government has failed to
21 produce any discovery material, other than information
22 establishing your factual innocence, including Jencks Act
23 material, *Brady* material, and impeachment material that has not
24 already been produced as of the date of the signing of the
25 agreement.

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1 Do you understand that?

2 THE DEFENDANT: Your Honor, can I speak to my lawyer
3 for a minute, please?

4 THE COURT: Yes, of course.

5 (Defendant conferring with his counsel)

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you need to talk to your lawyer
8 further?

9 THE DEFENDANT: No, thank you.

10 THE COURT: Do you understand the waiver in your plea
11 agreement?

12 THE DEFENDANT: I do.

13 THE COURT: Does the government have any other aspects
14 of the plea agreement that they would like me to discuss with
15 Mr. Shvartsman?

16 MR. NESSIM: No, your Honor.

17 THE COURT: Mr. Futerfas, any other aspects of the
18 plea agreement to discuss?

19 MR. FUTERFAS: No, thank you, your Honor.

20 THE COURT: Mr. Shvartsman, does this written plea
21 agreement constitute your complete and total understanding of
22 the entire agreement between you and the government?

23 THE DEFENDANT: It does, your Honor.

24 THE COURT: Other than what is written in this
25 agreement, has anyone made any promises to you or offered you

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1 any inducements to plead guilty or to sign the agreement?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anyone threatened you or forced you to
4 plead guilty or to sign the plea agreement?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Has anyone made a promise to you as to
7 what your sentence will be?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Now what I'd like you to do is to tell me
10 in your own words what it is that you did that makes you
11 believe that you are guilty as charged in Count Three of the
12 superseding indictment.

13 THE DEFENDANT: Between October 1st and October 5 --
14 sorry.

15 THE COURT: Read slowly, please.

16 THE DEFENDANT: I apologize.

17 Between October 1st and October 5, 2021, I possessed
18 material information about DWAC's pursuit of TMG that was not
19 publicly available to the general public.

20 During this time, I had a duty to DWAC to keep this
21 information confidential and not act upon it. I purchased
22 2 million DWAC warrants on October 1st, 4th, and 5th, 2021, and
23 information I had was a factor in my decision to purchase the
24 warrants.

25 After the DWAC-TMG merger was executed and became

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1 public on or about October 20, 2021, I sold those warrants at a
2 profit.

3 THE COURT: DWAC is the Digital World Acquisition
4 Group; is that right?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And TMG is Trump Media?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And did you know what you were doing was
9 wrong and illegal?

10 THE DEFENDANT: I understand that these trades were
11 unlawful; sir, yes.

12 THE COURT: Excuse me?

13 THE DEFENDANT: I understand that these trades were
14 unlawful, yes.

15 THE COURT: Does the government have additional
16 questions that they'd like me to ask the defendant?

17 MR. NESSIM: Just to clarify, the defendant
18 understands that at the time and not now. I can also make a
19 proffer on venue.

20 THE COURT: Let me take it in pieces.

21 At the time that you engaged in this conduct, did you
22 understand that what you were doing was wrong and illegal?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. Does the government wish other
25 questions?

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1 MR. NESSIM: Not as to the allocution, your Honor.

2 THE COURT: Do you want to make a proffer as to venue?

3 MR. NESSIM: Yes, your Honor. As part of executing
4 these purchases of warrants, the defendant contacted by phone
5 and other means of communication a broker located in Manhattan
6 who executed those purchases on defendant's behalf.

7 THE COURT: Did you do that, Mr. Shvartsman?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Is there any objection as to venue,
10 Mr. Futerfas?

11 MR. FUTERFAS: No, there's not, your Honor.

12 THE COURT: Mr. Futerfas, do you know of any valid
13 defense that would prevail at trial or any reason why your
14 client should not be permitted to plead guilty?

15 MR. FUTERFAS: No, your Honor.

16 THE COURT: Would the government please summarize what
17 its evidence would be if the defendant were to go to trial.

18 MR. NESSIM: Yes, your Honor. The government's
19 evidence at trial would include the testimony of numerous
20 witnesses as well as the admission of documents, including the
21 non-disclosure agreements signed by the defendant,
22 communications and minutes referencing DWAC board meetings and
23 inside information, communications among the conspirators
24 concerning information relating to DWAC, trading data and the
25 execution of trades, as well as the sale of securities.

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1 All told, that evidence would establish that the
2 defendant engaged in the crime of insider trading when he
3 purchased DWAC warrants while in possession of material
4 non-public information that he had misappropriated from DWAC in
5 violation of his duty willfully and knowingly.

6 THE COURT: Mr. Shvartsman, were you able to follow
7 what the prosecutor said?

8 THE DEFENDANT: I was, your Honor.

9 THE COURT: Did you do what he said you did?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Mr. Futerfas, do you agree there is a
12 sufficient factual predicate for the guilty plea?

13 MR. FUTERFAS: Yes, your Honor.

14 THE COURT: Do you know of any reason that I should
15 not accept your client's plea of guilty?

16 MR. FUTERFAS: No, your Honor.

17 THE COURT: Does the government agree there is a
18 sufficient factual predicate for the guilty plea?

19 MR. NESSIM: Yes, your Honor.

20 THE COURT: Does the government know of any reason I
21 should not accept the defendant's plea of guilty?

22 MR. NESSIM: No, your Honor.

23 THE COURT: Mr. Shvartsman, how do you plead to Count
24 Three of the superseding indictment?

25 THE DEFENDANT: Guilty, your Honor.

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1 THE COURT: Mr. Shvartsman, because you acknowledge
2 that you are in fact guilty as charged in Count Three of the
3 superseding indictment, because I'm satisfied that you know of
4 your rights, including your right to go to trial, and that you
5 are aware of the consequences of your plea, including the
6 sentence which may be imposed, and because I find that you are
7 knowingly and voluntarily pleaing guilty and knowingly and
8 voluntarily entered into the plea agreement, I accept your
9 guilty plea and I enter a judgment of guilty on Count Three of
10 the superseding indictment.

11 The probation department will want to interview you in
12 connection with the presentence report that it will prepare.
13 Mr. Futerfas, I assume that you or defense counsel wish to be
14 present for an interview in connection with that report.

15 MR. FUTERFAS: We do, your Honor. Thank you.

16 THE COURT: I order there be no interview unless
17 defense counsel is present.

18 Mr. Shvartsman, if you choose to speak to the
19 probation department, make sure that anything that you say is
20 truthful and accurate. I will read the report carefully, and
21 it is important to me in deciding what sentence to impose. You
22 and your counsel have the right to examine the report and to
23 comment on it at the time of sentencing. I urge you to read it
24 and discuss it with your lawyer before sentencing. If there
25 are any mistakes in it, point them out to your lawyers so that

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1 they can bring them to my attention before sentencing.

2 Will you do that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: We need a date and time for sentencing.

5 July 17 at 2 p.m. But I'm also prepared to impose
6 sentence on Mr. Shvartsman on the same day I'm imposing
7 sentence on his brother.

8 MR. FUTERFAS: Your Honor --

9 THE COURT: Do you have a preference?

10 MR. FUTERFAS: I think so. What date is Mr. Gerald
11 Shvartsman on for, your Honor?

12 THE COURT: July 11.

13 MR. RIOPELLE: You can put us both on the 17th, then
14 we can miss the July 4th issue.

15 MR. FUTERFAS: My preference would be for July 17.
16 I'm starting a trial on June 10 in the Eastern District of New
17 York, and there is a greater likelihood I'll have completed
18 that trial by the 17th than the week before.

19 THE COURT: We'll set sentencing for July 17 at 2 p.m.
20 And we'll do Gerald Shvartsman at 3 p.m. that day. I'll enter
21 a separate order to that effect in the case of Gerald
22 Shvartsman.

23 So, the sentencing in this case is set for July 17 at
24 2 p.m.

25 I direct the government to provide the probation

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1 officer with its factual statement within seven days. Defense
2 counsel must arrange for the defendant to be interviewed by the
3 probation department within two weeks.

4 Let me refer counsel to my individual rules and
5 practices for criminal cases available on the court's website
6 which contains some rules regarding sentencing submissions.

7 In accordance with those rules, the defense
8 submissions are due two weeks prior to sentencing.
9 Mr. Futerfas, that would be on July 3. If you wanted to do it
10 earlier than July 3, that's also fine with me. But July 3 is
11 your date. The government's submissions are due one week prior
12 to sentencing.

13 In the case of Gerald Shvartsman we'll enter an order
14 also reflecting the new dates for sentencing submissions.

15 Is there any objection to Mr. Shvartsman's bail being
16 continued as set?

17 MR. NESSIM: No, your Honor.

18 THE COURT: So bail will be continued as set.

19 Mr. Shvartsman, do you understand that all the conditions on
20 which you were released up to now continue to apply, and that a
21 violation of any of those conditions can have very serious
22 consequences for you at the time of sentencing?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: You must be in this courtroom for
25 sentencing at the time and date set or you will be guilty of a

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1 separate crime, that of bail jumping, and subject to a fine
2 and/or prison term in addition to whatever sentence you may
3 receive for the crime to which you've just pled guilty.

4 Do you understand that?

5 THE DEFENDANT: Yes. I will be here.

6 THE COURT: Okay. Did the government have the
7 anything further?

8 MR. NESSIM: No, your Honor.

9 THE COURT: Mr. Futerfas, anything further?

10 MR. FUTERFAS: Nothing, your Honor. Thank you.

11 THE COURT: Good day, everybody. Thank you.

12 (Adjourned)